

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

ATCP 74, Local Agents and Regulations. Replaces portions of ch. ATCP 75, and DHS 192.

Subject

The relationship and expectations between the Wisconsin Department of Agriculture, Trade and Consumer Protection (Department) and its agent retail food, lodging, and recreational safety programs.

Fund Sources Affected

☒ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG SEG-S

Chapter 20, Stats. Appropriations Affected

20.115 (1)(a)
20.115 (1) (gb)

Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect
☐ Indeterminate

☐ Increase Existing Revenues
☐ Decrease Existing Revenues

☐ Increase Costs
☒ Could Absorb Within Agency's Budget
☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy
☒ Local Government Units

☐ Specific Businesses/Sectors
☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

This rule change does not reflect a "policy problem". It actually deals with a legislatively mandated merger, between the Food Safety and Recreational Licensing unit in the Department of Health Services (DHS) and the Department's Division of Food Safety, which will remove duplication and improve efficiency.

On July 1, 2016, ch. DHS 192 and part of ch. ATCP 75, both dealing with agent programs, were combined into a new ATCP 74, involving the relationship of the new Division of Food and Recreational Safety (DFRS) and its agent programs. Under the authority of an approved DHS scope statement, the Department is now revising s. ATCP 74.

There is a need to merge the existing rules from both departments in order to standardize language and update definitions to reflect the new reality of "restaurants" being statutorily considered "retail food establishments", as well as to address other lesser changes. The contractual expectations between the Department and the agent programs are also being updated along with the contract language. These updates are also reflected in the new rule.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Businesses and Business Sectors

This rule change is anticipated to have no impact on small business, since local agents were already handling the licensing, investigation, and inspection of these businesses when the agent programs were overseen by two agencies (this Department and the Department of Health Services).

The Department anticipates requirements applicable to some businesses will be clearer since some business entities were regulated by local agents operating under rules promulgated by the different agencies. In these cases, the business would be operating under a memorandum of understanding (MOU) that allowed them to hold only one license but did not exempt them from complying with both sets of rules. Now these entities will only operate under one set of rules which should simplify compliance.

State's Economy

The merged oversight of local agent programs, embodied in ch. ATCP 74, will benefit the state's economy in that it will allow one Department to regulate all retail food establishments while eliminating duplication and inconsistency.

Local Governmental Units and Public Utility Rate Payers

The rule is primarily directed at local governmental units that enter into a contractual relationship with the state to do retail food, lodging, and recreational safety inspections. Since the rule clarifies contractual language, merges the language and expectations of two programs, and clarifies expectations for credentialing of staff, it should have a positive impact by allowing local governmental units to do better planning.

Economic Impact Analysis Comments

The Department posted the proposed rule online as required under Wis. Stat. § 227.137 and solicited comments from organizations representing Wisconsin's local health departments as well as committees representing both state and local retail food safety professionals. No comments were received.

Fiscal Impact

Since this rule deals with interagency as well as state-local cooperation, this rule will not have a significant fiscal impact on state government and DATCP will absorb any costs with current budget and staff. This rule will have little fiscal effect on local governments and none on public utility rate payers.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule reflects the merger of two state agencies and will result in greater efficiency in this Department, now overseeing all agent program licensing, investigation, and inspection, greater efficiency in the delivering of training and technical support to agent programs, and greater efficiency for the industry by eliminating bureaucratic duplications and inconsistencies. The only alternative to implementing the rule would be to enforce the existing rule, which does not reflect the best practices now specified in the Department – agent contracts.

Long Range Implications of Implementing the Rule

There are no long range negative implications of implementing the rule. In the long run, the rule will clarify responsibilities between the Department and its agent program, and that will result in an upgrade of the service of the State to its agents programs, and the agent programs to the businesses and the people of Wisconsin.

Compare With Approaches Being Used by Federal Government

The proposed rule mirrors the increased collaboration between the State of Wisconsin and the FDA. The State is formalizing and clarifying its relationship with the FDA through the Voluntary Retail Food Regulatory Program Standards program, and this is similar to what the Department is doing with the agent programs by updating the contract language and clarifying the contractual expectations in the proposed rule.

Surrounding State Programs – This chapter is specifically intended to clarify the relationship between the Department’s DFRS with the local health departments that wish to act as agents of DFRS. The practices of surrounding states have little bearing on this relationship or the contract between a local health department and DFRS.

Minnesota currently has only seven local health department agent programs that do retail food establishment inspections under the oversight of the Minnesota Department of Agriculture (MDA). All other food-related inspections are done under the oversight of the Minnesota Department of Health (MDH). The agent programs have their own fee structure and sell their own licenses. The MDA has taken parts of the 2005 FDA *Food Code* and incorporated them into their administrative rules. They require a Registered Environmental Health Sanitarian (REHS) certification for inspection staff or a degree-equivalent in order to do food inspections. They also require new hires without the REHS to earn that credential within two years and to operate under the supervision of a credentialed inspector until they do. The MDH has similar requirements.

Iowa also has agent program food inspectors regulating retail food establishments. The agent programs do only retail food inspections, follow identically Iowa’s state rules, and must use Iowa’s inspection program. They must also use Iowa’s fee structure for licenses. An RS or REHS certification or supervision by a certified person for Food Inspections is not required, but Iowa is working toward Standard 2 from the FDA’s National Voluntary Program Standards. Iowa’s policies and program expectations may change as the Iowa program meets FDA’s retail food inspection regulatory standards.

Michigan allows local jurisdictions to only do restaurant inspection. All other retail food establishment inspection is done by the state. Michigan does not require an RS or an REHS for the restaurant inspector, but does have state accreditation standards that are roughly similar, in their opinion, and require 20 CEU’s of on-going education per year as well as the successful completion of an audit. The agent programs are allowed to sell licenses and may set its own fees.

Illinois does not do any retail food inspection on a state level. Local programs do all the retail and restaurant inspection. They do not sell licenses locally, but are funded by a state grant, the Local Health Program Grant (the LHPG). The state requires a Licensed Health Professional (LHP) certification which is Illinois’ version of Wisconsin’s RS or the national REHS. This certification requires 5 Continuing Education Units (CEU’s) per year. The state evaluates the local programs at the same rate Wisconsin does, and their program depends on passing an evaluation.

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